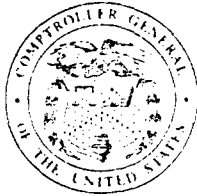


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

58935 97531

FILE: B-184022

DATE: September 16, 1975

MATTER OF: Automated Datatron, Inc.; Microfilm Communications
Systems, Inc.

DIGEST:

1. Absent any evidence submitted by protester that GPO can procure microfiche duplication cheaper by soliciting film and services separately, GAO will not disturb agency's decision to solicit microfiche duplication on the basis of lowest aggregate cost for film and related services.
2. In bid protest cases, GAO is primarily concerned with determining whether award is in accordance with applicable procurement laws and regulations; it is not function of GAO to enforce anti-trust laws and any question relative thereto is for consideration by Department of Justice. Hence, GAO will not consider protest of service companies alleging that low bidders on microfiche duplication services manufacture microfiche film and have quoted price to protesting company for microfiche film higher than price quoted GPO for film and related services.
3. GAO will not disturb award of contract made pending protest since record indicates that agency made necessary determinations and findings. In any event, GAO does not have authority to require withholding of award pending its decision on bid protest.

Automated Datatron, Inc. (ADI), has protested to our Office the awarding of any contracts by the United States Government Printing Office (GPO) under programs 119-S, 229-M and 122-S. Microfilm Communications Systems, Inc. (MCSI), also protests the awarding of any contract under GPO Program 229-M.

All three programs involve the procurement of microfiche duplication. The microfiche duplication process begins with the transfer of the contents of the documents or other material to computer punch cards. Key punch operators perform this initial phase. Next, the data which appears on the computer punch card is converted into coded symbols and is stored on computer magnetic tape. A "microfiche" is generated from this computer magnetic tape by means of a process called "computer output to.

microfilm" (COM). The COM process converts the symbols on the computer magnetic tape to written form, reduces the size of the lettering and renders it suitable for photographing on original microfiche film. One microfiche is capable of holding well over 200 pages of material. The original microfiche may be duplicated and circulated to appropriate parties for storage.

Program 119-S is for the procurement of duplicate microfiche of the Army and Navy Management Data List for the Defense Supply Agency. The Management Data List is a comprehensive computer generated listing of inventory materials by description, Federal stock number, and manufacturer, and contains data on shelf life and cost for the items listed. The requirements for Program 229-M are similar, except that the inventory listing contains only the description of the material and the Federal stock number. Program 112-S is for the procurement of duplicate microfiche of the Air Force and Marine Corps Management Data List.

In all three programs, bids were requested on the complete product - labor, materials and services required to deliver the end product, the duplicate microfiche.

Program 119-S is an annual requirements type contract for the term commencing July 1, 1975. Bids were evaluated as follows:

(1) Kalvar Corp.	\$276,868.98
(2) Xidex Corp.	284,140.08
(3) ADI	413,982.10

Program 122-S is very similar to 119-S. Four bids were received and were evaluated on the basis of an estimated 1-year's procurement as follows:

(1) Xidex Corp.	\$217,714.11
(2) Information Index	306,134.18
(3) ADI	308,034.28
(4) Comanagement Co.	477,744.44

Kalvar Corporation did not bid. Xidex Corporation was requested to review and confirm its bid and did so on June 25, 1975.

Program 229-M is a multiple award requirement contract for the term commencing July 1, 1975. Bids were evaluated on an estimated 1-month requirement and were as follows:

(1) Kalvar Corp.	\$ 80,601.10
(2) Xidex Corp.	83,248.70
(3) Information Index	101,700.32
(4) MCSI	106,709.61
(5) ADI	121,957.18
(6) Bruning Microfilm	123,942.25
(7) Superior Microfilm	130,130.72

Due to the urgent need of the Identification Lists, award was made to Kalvar Corporation on June 20, 1975, notwithstanding the protests.

ADI sets forth two reasons why the instant solicitation should be canceled: (1) separate resolicitation for services and supplies required under the contracts would be in the best interest of the Government because a lower price would result and (2) the low bidders on the programs, Kalvar Corporation and Xidex Corporation, are engaging in behavior in the microfiche duplication market which violates the anti-trust laws. MCSI joins ADI in asserting this second reason for cancellation of the solicitations.

ADI has presented no evidence to us to support its contention that a separate resolicitation for services and supplies for microfiche duplication would result in lower prices to the Government. The only cost data presented to GAO are figures which indicate that Kalvar Corporation and Xidex Corporation quoted ADI a higher price for microfiche film than the price quoted to GPO by Kalvar and Xidex for the film and related services, including duplication. This evidence does nothing to show that a lower price would result from separate solicitation of supplies and services. To the contrary, ADI's allegation that the cost of the film is the major portion of the microfiche duplication process suggests to us that the companies able to supply the cheapest film will be the lowest bidders on microfiche duplication. Therefore, GAO will not disturb GPO's decision to award the contracts on the basis of the lowest aggregate cost for supplies and services for microfiche duplication.

ADI's second contention is that the low bidders on the programs, Kalvar Corporation and Xidex Corporation are engaging in behavior in violation of the anti-trust laws by quoting a higher price to service companies like itself for the microfiche duplication film than the price quoted to GPO for the entire microfiche duplication job, including film and necessary services. MCSI's protest is essentially the same although it does not assert that it asked Xidex Corporation or Kalvar Corporation for prices of microfiche film. In bid protest cases, GAO is primarily concerned with determining whether proposed

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awards are in accordance with applicable procurement laws and regulations. Our Office is not directly concerned with enforcement of anti-trust laws. Any question relative thereto is for consideration by the Department of Justice. See B-178822, October 10, 1973. We note in this regard that GPO has forwarded to the Department of Justice copies of the files of this case for its consideration of the allegations of violations of the anti-trust laws.

Finally, ADI protested the awarding of a contract to Kalvar Corporation under Program 229-M while its protest was pending before GAO. GAO's bid protest procedures provide:

"When a protest has been filed before award the agency will not make an award prior to resolution of the protest except as provided in the applicable procurement regulations. In the event the agency determines that award is to be made during the pendency of a protest, the agency will notify the Comptroller General." 40 Fed. Reg. 17979 (1975).

The record shows that the Chairman of the Contract Review Board made the necessary written findings and determinations on June 20, 1975, and the contract was awarded to Kalvar Corporation on that day. Although GAO did not receive notice of the award until a few days later, we believe the agency substantially complied with the spirit of our procedure. In any event, we have recognized that we have no authority to require the withholding of an award pending a decision by our Office on a bid protest. B-182823, April 29, 1975, 75-1 CPD 265; 51 Comp. Gen. 787, 792, (1972).

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States